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October 17, 2024

VIA ECF

The Honorable Judge Paul A. Engelmayer
U.S. District Court, Southern District of New York
Thurgood Marshall, United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Honeywell Int'l Inc. v. Ecoer Inc., et ano.*, Case No. 1:24-cv-01464-PAE

Dear Judge Engelmayer:

We represent Plaintiff Honeywell International Inc. ("Plaintiff") in the above-referenced action. We submit this joint letter motion, together with counsel for Defendants Ecoer Inc. and InverterCool, Inc. (together, "Defendants"), to respectfully request on behalf of all parties a 60-day extension of the November 20, 2024, deadline for close of fact discovery and extension of other dates in the Civil Case Management Plan and Scheduling Order (the "Scheduling Order") (ECF 38), as set forth below and in the enclosed proposed modified scheduling order. No previous request has been made to modify these deadlines.

The parties submit that good cause exists for the requested modification. The "good cause" inquiry turns on the diligence of the party seeking to modify the scheduling order. *See* Fed. R. Civ. P. 16 advisory cmte. notes to 1983 amendment. The parties have diligently pursued discovery, but due to unforeseen circumstances require additional time to complete their efforts.

Regarding their diligence, the Court initially stayed discovery in this case pending resolution of Plaintiff's motion to dismiss Defendants' counterclaims, on grounds that a brief stay would serve the goals of efficiency and convenience to allow the parties to contour their discovery obligations to the remaining claims at issue in the case (ECF 29). The Court further ordered that a case management plan would be due within one week of its order on Plaintiff's motion and should contemplate the completion of fact discovery within four months of the ruling.

The parties have diligently engaged in discovery since that time.

- **Pre-Resolution of Motion to Dismiss:** The parties served initial disclosures on May 28, 2024, and, as directed, thereafter worked to identify, process, and collect data, so that discovery could commence promptly following resolution of the motion to dismiss. The order on the motion to dismiss was issued on July 23 (ECF 36), and the parties submitted a case management plan on July 30.

Hon. Paul Engelmayer

October 17, 2024

Page | 2

- **Documentary Discovery:** Defendants served their First Request for Production of Documents on August 2, 2024, to which Plaintiff served responses and objections on September 3. After filing its answer to the remaining counterclaim on August 6, 2024, Plaintiff served its First Set of Requests for the Production of Documents on August 20, and Defendants thereafter served their Objections and Responses to Honeywell's First Set of Requests for the Production of Documents on September 23.

Plaintiff made an initial production of documents on August 23, after the parties agreed to a protective order. Plaintiff expects to complete its document production, which includes numerous foreign language documents requiring additional review before production, by the end of the month. Defendants made an initial production of documents on September 11, which comprised a set documents to be used as exhibits at a deposition, as described below. Defendants expect to complete their document production, which also includes numerous foreign language documents, next week.

- **Written Discovery:** Defendants served their First Set of Interrogatories to Honeywell on September 23, 2024. Plaintiff served its First Set of Interrogatories and First Set of Requests to Admit to Defendants the same day. Responses and objections to each are due on November 6.

The parties have made progress in deposition discovery, but have been delayed by unforeseen complications with witness scheduling and delay in completing documentary discovery. In late July 2024, Plaintiff learned that an important witness for both sides, its employee Ms. Lori Murphy (whose communications with Defendants' principal represent a significant issue in the case), would shortly be going on prolonged medical leave. Counsel for Plaintiff promptly alerted Defendants to this issue on August 2. Plaintiff informed Defendants that Ms. Murphy's leave was scheduled to begin on September 13 and volunteered that Plaintiff would make an expedited production of documents relating to Ms. Murphy to allow her deposition to be taken ahead of that date. On August 21, after arranging scheduling accommodations, Defendants agreed to Plaintiff's proposal. Plaintiff produced the relevant documents on August 23, and Defendants made an initial production of documents relating to their examination of Ms. Murphy on September 11, ahead of her deposition which took place the following day on September 12. The result of this unforeseen circumstance was that the parties needed to prioritize sharing documents relevant to Ms. Murphy's testimony, and prepare for the same, out of order of the normal course of documentary discovery.

The parties have also worked to schedule other depositions, serving Rule 30(b)(6) depositions for the parties, and also noticing depositions of three current employees and two former employees. They are working to schedule these depositions, but require additional time for several reasons. First, following completion of document productions, both sides will need additional time to translate and meaningfully review foreign language documents, of which the parties expect number in the hundreds of documents. Two other

Hon. Paul Engelmayer

October 17, 2024

Page | 3

deponents are not available to be deposed until the second half of November, and a third is located out of the United States and thus requires additional arrangements for scheduling. Additionally, since the preparation of the initial case management plan, Plaintiff has learned that an employee of a distributor who Defendants identified as having knowledge relating to their claim of damages is no longer employed by that distributor. Plaintiff requires additional time to locate and connect with this potential witness.

In light of the above, the parties respectfully submit that (a) they have diligently pursued written, documentary, and deposition discovery in the matter, including during the short time that discovery was stayed pending resolution of the motion to dismiss; (b) they require a 60-day extension to complete fact discovery including production of documents, resolve any potential discovery disputes, and allow scheduling of party and nonparty depositions, and extension of other deadlines as set forth in the Proposed Amended Scheduling Order; and (c) there is good cause for the requested modification due to the unforeseen complications regarding Ms. Murphy's testimony and related documents, the completion of document productions, including foreign language translations, and the scheduling of their corporate depositions, as well as nonparty former employee depositions.

Accordingly, the parties respectfully request entry of the enclosed proposed scheduling order, which sets forth the original and modified deadlines requested herein.

Respectfully Submitted,

/s/ Theresa M. House

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GRANTED. Given the length of the extension, the parties should not expect further extensions, absent extraordinary circumstances. The Court adjourns the telephonic case management conference scheduled for December 20, 2024 to 10:00 a.m. on February 13, 2025.

SO ORDERED.



PAUL A. ENGELMAYER

United States District Judge

Dated: October 18, 2024

New York, New York